


Title IX Administrator Annual Training 2023

Alderson Broaddus University, Davis & Elkins College, and West Virginia
Wesleyan College

Amy Kittle, Title IX Coordinator



Roles in the Processes

All Title IX
Administrators
MUST be
neutral and
free from bias
or conflict of
interest

Title IX Coordinator: Oversees the process; ensures federal compliance and that policy and procedures are followed; issues all formal correspondence and notice related to the process

Decision Makers: Deputy Coordinators! Depending on the respondent classification, they may be a hearing chair and/or a decision maker (or appellate officer)

Appellate Officers: Deputy Coordinators! Depending on the respondent classification, the designated Coordinator will not participate in the hearing but instead serve as an appeal officer

Investigator: the person or people who are neutral fact gatherers of the evidence and responsible for drafting and finalizing the investigation report

Advisor: A person who assists complainants or respondents in understanding our policies and procedures and their decision making throughout the process. Advisors also have a role in live hearings.

Role of the Decision Maker (Deputy Coordinators)

- Oversees the “live” hearing(Process A)
- Ensures the “live” hearing follows policies and procedures and is in compliance with applicable laws and regulations(Process A)
- Makes relevancy determinations at the hearing(Process A)
- Make determination of responsibility
 - Independent determination
 - Cannot give deference to an investigation report (Process A)
- Provides a rationale for the decision; Title IX Coordinator issues written outcome notice to the parties

- If the Respondent is a student, the Chair will be the Dean of students.
- If the Respondent is an employee, the Chair will be the Director of Human Resources.
- If the Respondent is a member of faculty, the Chair will be the VPAA.

Role of the Appellate Officer (Deputy Coordinators)

- Does not otherwise participate in the process as they must be neutral in their consideration
- Implement the appeal process as defined in the policy
- Communicates with the Title IX Coordinator when appeals have been filed and when the process is complete
- Provides documentation of the appeal process to the Title IX Coordinator for the case file

- If the Respondent is a student, the written appeal shall be submitted to the VPAA.
- If the Respondent is an employee, the written appeal shall be submitted to the Dean of Students.
- If the Respondent is a member of faculty, the written appeal shall be submitted to the Director of Human Resources.

Advisors may be

- An advisor of choice (This advisor is chosen by the party and entitled to accompany the party to all meetings, interviews, hearings, etc.)

OR

- A College or University appointed advisor (This advisor may accompany the party throughout the entire process; however, unless requested, this advisor will only be appointed if the party has not chosen one by the time of the “live” hearing.

Advisor requirements

- Advisors of choice may be friends, family, roommates, faculty, staff, attorneys, or anyone else.
- Advisors may not advise on both “sides” of the same complaint in the same case.
- Must be transparent about availability and any possible conflicts of interests or commitments.

The advisor can:

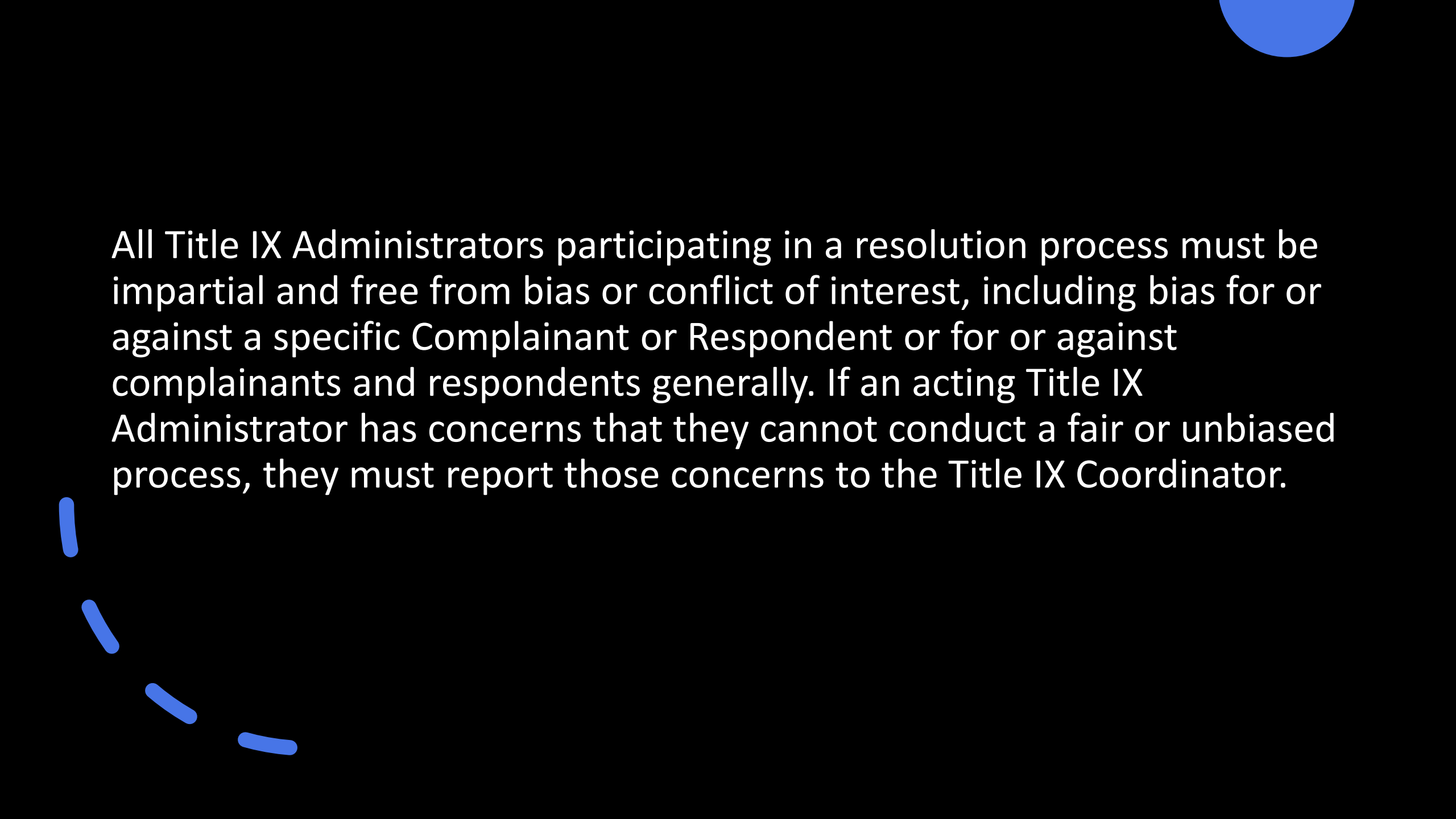
- Accompany the advisee through all phases of the resolution process and explain each step of the process.
- Assist the advisee in understanding the Notice of the Investigation, allegations, and relevant policy.
- Help the advisee to decide about whether to file a formal Title IX sexual harassment complaint or to appeal the dismissal of a formal complaint.
- Help the advisee think through options, such as initiating or cooperating with an informal resolution

The advisor
will:

- Conduct questioning on behalf of their advisee at the hearing.
- Conduct cross-examination at the hearing.
- Maintain decorum during the hearing.



Bias and Conflict of Interest



All Title IX Administrators participating in a resolution process must be impartial and free from bias or conflict of interest, including bias for or against a specific Complainant or Respondent or for or against complainants and respondents generally. If an acting Title IX Administrator has concerns that they cannot conduct a fair or unbiased process, they must report those concerns to the Title IX Coordinator.

Bias

One's gender, current or past work history, support or opposition to particular causes or political affiliations do not, in and of themselves indicate bias.

The Title IX Coordinator signing a complaint is not an act of bias.

Participating in an emergency removal process is not act of bias unless the knowledge presented in the process biases the employee.

Advisors may not serve for a complainant or a respondent *in the same case*.

Conflict of Interest

The Title IX Coordinator may NOT be the decision maker.


The decision maker may NOT be the appellate officer.

The investigator may NOT be the decision maker.

The investigator may NOT be the appellate officer.

Policy and Procedure on Discrimination, Harassment, and Title IX Sexual Harassment

Our collective policy prohibits discrimination, harassment, domestic & sexual misconduct, stalking, and retaliation that may occur on the basis of a person's race, color, national origin, ancestry, age, physical or mental disability, marital or family status, service in the uniformed services, religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression in the administration of **ANY** of its educational programs, activities, or with respect to admission or employment.



Who must
comply with our
policy?

All campus community members which include faculty, staff, students, volunteers, visitors, contractors, consultant, venders providing services, and individuals who are participating in a sponsored program or activity. Guests and visitors are expected to comply, but the ability to hold third parties accountable is limited outside of limiting or denying them access to our campuses.

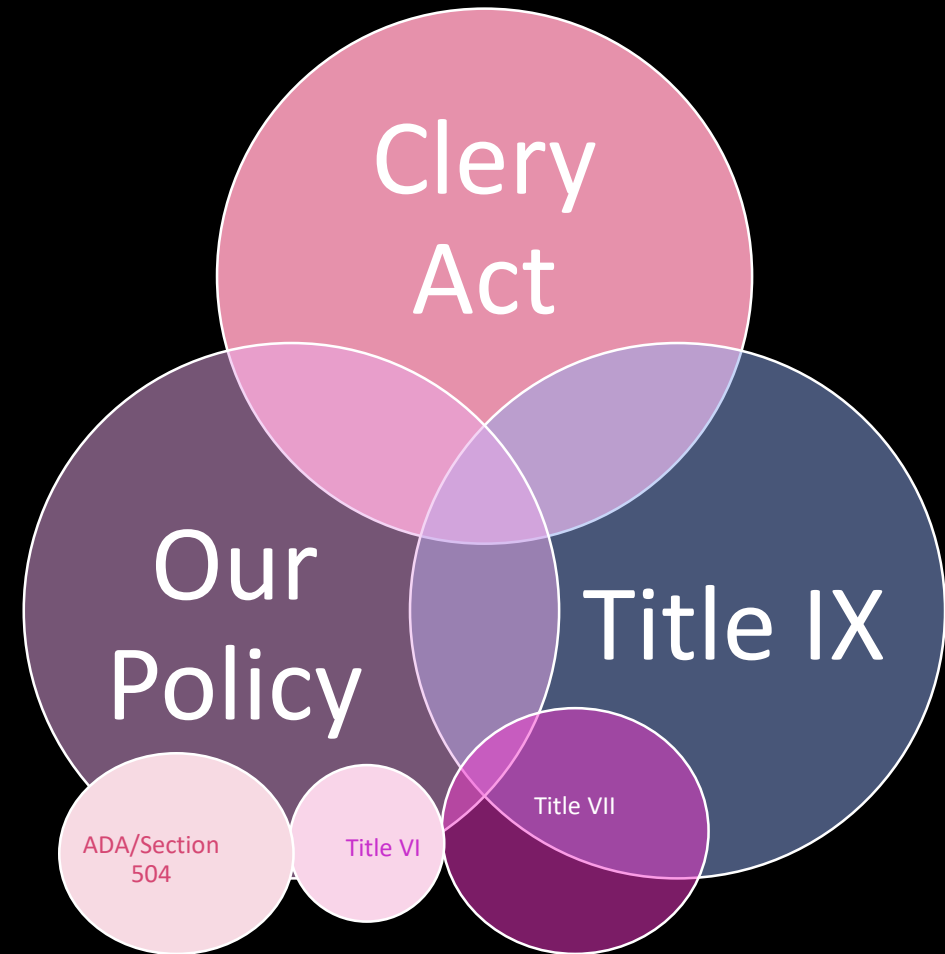
Clery Act: Federal consumer safety crime reporting law that includes obligations around sexual assault, dating and domestic violence, and stalking

Title IX : Federal law that prohibits discrimination and harassment on the basis of sex (and gender)

Title VI: Federal law that prohibits discrimination and harassment on the basis of race in educational institutions that receive federal funding

Title VII: Federal law the prohibits discrimination and harassment in employment settings

ADA: A federal law the prohibits discrimination against individuals with disabilities in all areas of public life



All responsible employees and Officials with Authority are required to report any Title IX or other form of Prohibited Conduct to the Title IX Coordinator.

Discrimination & Harassment

Protected Identities

- race
- color
- national origin
- ancestry
- age
- physical or mental disability
- marital or family status
- pregnancy
- veteran status
- service in the uniformed services
- religion
- creed
- sex
- sexual orientation
- genetic information
- gender identity
- gender expression

Title IX

“ No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Title IX: Who must comply?

- Educational institutions, including colleges and universities, that receive federal financial assistance such as Title IV funding
- Colleges and Universities are required to implement policies and procedures that protect individuals from Title IX sexual harassment that occurs in their educational programs and/or activities *in the United States*.

New Regulations

- Informally released on May 6, 2020
- Published in the Federal Register on May 19, 2020
- Effective August 14, 2020
 - Does not apply retroactively; only on actual reports filed after August 14, 2020
- March 8, 2021 Executive Order commanding the ED to review existing Title IX regulations and issue need guidance as appropriate
- June 23, 2022 (Title IX's 50th birthday!) the US Department of Education released proposed changes to Title IX regulations and opened the public comment period.
- May/June 2023 anticipated new regulations with an expectation of a late summer/early fall implementation date

Training Requirements (Title IX)

- **All:** Definitions of Title IX Sexual Harassment and all other forms of Prohibited Conduct; the scope of the College/University program and activities; Title IX Jurisdiction; the investigation process; hearing process; appeals, informal resolutions, and how to serve impartially to avoid bias and conflict of interest.
- **Hearing Officers (Deputy Coordinators):** hearing process; issues of relevance; avoiding prejudgment of the facts at issue, and any technology that might be used during a hearing
- **Investigators:** issues of relevance; how to conduct an investigation; and avoiding prejudgment of the facts at issue

Training Requirements (Clery)

Issues related to dating violence, domestic violence, sexual assault, and stalking

How to conduct an investigation and hearing process that protects the safety of victims and promotes accountability*

** Because of the overlap between Title IX and Clery, it is important to provide training on how to conduct a training and hearing process that protects the safety and provides due process for BOTH parties.*

Scope of Programs and Activities

All of the College/University's operations, including, but not limited to, "traditional educational operations, faculty and student housing, campus transportation services, campus dining services, the bookstore, and any other commercial activities."

Title IX Jurisdiction

In order for Title IX to apply, the alleged conduct must have occurred in a College or University program or activity *in the United States*. There must be a nexus between conduct and the sponsored program or activity.

What about off campus sexual harassment?

- ✓ Did the sexual harassment occur at an off campus apartment or location not controlled by the institution or a recognized organization?
- ✓ Did the sexual harassment occur in another country?
 - No, Title IX does NOT apply.

What about off campus sexual harassment?

- ✓ Did the harassment occur as part of the institution's educational program or activity?
- ✓ Did the harassment occur on property owned or controlled by the College or University or a recognized student organization?

YES. Title IX Applies.

*While Title IX may not apply to incidents that occur off campus or in another country, the new Policy and Procedure on Discrimination, Harassment, and Title IX Sexual Harassment, Student Codes of Conduct, and employee and faculty handbooks **STILL** apply.*

The institution is still required to remedy any on-campus effects the misconduct might have caused.

Title IX Sexual Harassment

Defined in our policy and the 2020 regulations as the following conduct that occurs *on the basis of sex*:

- Quid pro quo harassment
- Hostile environment harassment
- Sexual assault
- Dating & Domestic violence
- Stalking
- Retaliation

Unwelcome conduct (on the basis of sex) determined by a reasonable person to be so severe, pervasive, **AND** objectively offensive that it effectively denies a person equal access to the University's education program or activity.

Title IX Sexual Harassment as defined in the 2020 regulations

Within Title IX Jurisdiction

Title IX Sexual Harassment (Process A)	Non-Title IX Sexual Harassment (Process B)
Sexual harassment	Sexual harassment
Sexual assault	Sexual assault
Dating violence	Dating violence
Domestic violence	Domestic violence
Stalking	Stalking
	All other policy violations: discrimination and harassment based on a protected identity

Not Within Title IX Jurisdiction



DEFINITIONS

.....and related issues

Discrimination is conduct that is based on an individual's race, color, national origin ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, **sex***, sexual orientation, genetic information, gender identity, or gender expression and excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in the College or University program or activities. This includes failure and refusal to provide reasonable accommodations, consistent with state and federal law, to persons with disabilities or who are pregnant.

Discrimination

** Discrimination on the basis of sex still falls under Title IX, but it does NOT constitute Title IX Sexual Harassment, and will be resolved under "Process B."*

Harassment is conduct that creates a Hostile Environment, as defined by our Policy, and is based upon an individual's race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression. Harassment may take various forms, including, but not limited to, name-calling, graphic or written statements (including the use of social media, text messages, email, or other similar forms), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not necessarily have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Sex and gender-based harassment can include Sexual Harassment as specifically defined by this Policy and non-sexual harassment based on stereotypical notions of what is female/feminine versus male/masculine or failure to conform to those gender stereotypes.

Harassment

Unwelcome conduct (on the basis of protected identity) determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the College or University's education program or activity.

Hostile Environment

Harassment that creates a Hostile Environment (as defined in our Policy) based on sex, which includes, but is not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature

Sexual Harassment

When an employee conditions the provision of an aid, benefit, or service of another's participation in *unwelcome* sexual conduct.

Quid Pro Quo

Examples of Possible Hostile Environment Sexual Harassment

- unsolicited, deliberate, or repeated touching, sexual flirtation, advances or propositions which are not welcomed and/or desired;
- unwelcome jokes, stories, comments, innuendos, or other sexually oriented statements which are specifically designed to embarrass or humiliate through their sexual subject matter content;
- unwelcome sexual communication such as graphic or degrading comments about one's gender related to personal appearance;
- unwelcome display of sexually explicit materials, objects, or pictures in an individual's place of work or study, such as viewing material on computers or other electronic devices where others can see.

(Subjective offensiveness alone is not enough to create a hostile environment.)

Is it a hostile environment?

- From a reasonable person's perspective consider the following
 - The type of misconduct
 - The frequency of the misconduct
 - Where the misconduct occurred
 - The roles of the relationship between the individuals

(Subjective offensiveness alone is not enough to create a hostile environment.)

Any sexual act directed at another person, without the consent of the victim including instances where the victim lacks the ability to Consent. Sexual assault can occur between individuals of the same or different sexes and/or genders. Sexual assault includes the following:

Non-Consensual Penetration: Actual or attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the affirmative consent of the victim. This includes forced penetration and/or against the person's will in instances where the victim is incapable of giving affirmative consent because of their youth or because of their temporary or permanent mental or physical incapacity.

Fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity;

Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or

Statutory Rape: sexual intercourse with a person who is under the statutory age of consent.

Sexual Assault

Agreement, approval, or permission to some act or purpose given knowingly, willingly, and voluntarily by a competent person.

Silence, by itself cannot constitute consent.

Consent to one sexual act does not constitute consent to a different sexual act.

Previous consent cannot imply consent to future sexual acts.

Consent is required regardless of the parties' relationship status or sexual history.

Consent

A person is less than sixteen year's old;
Mentally incapacitated;
Physically unable to resist; or
Is so intoxicated as to be incapacitated* (i.e., unable to knowingly and intentionally make decisions for him or herself).

**Intoxication from alcohol or drug use, alone, does not bar Consent.*

Incapacitation negates consent when the alleged perpetrator knows, or a reasonable person, under the circumstances, should know that the alleged victim is incapacitated.

The presence of Forcible Compulsion also makes consent impossible.

Incapacity to Consent

Understanding Sexual Violence (Video)



Sexual Exploitation

“Sexual exploitation” means taking sexual advantage of another person without his or her consent. Sexual advantage includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; **recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third parties to observe private sexual acts; disclosing, causing to be disclosed or threatening to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed; and engaging in voyeurism.**

Any act violence

Committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and

Where the existence of such a relationship is determined based on a consideration of the length, type, and frequency of interactions between the persons involved in the relationship.

Dating Violence

A felony or misdemeanor crime of violence committed by:

a current or former spouse or intimate partner of the victim;

a person with who the victim shares a child in common;

a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or,

by any other person against an adult or youth victim who is protected from the person's acts under the domestic or family violence laws of the jurisdiction in

Domestic Violence

Intimate Partner Violence (Video)

Is the behavior of a person:

- Engaging in a course of conduct
- Directed at a specific person

That would cause a reasonable person

- To fear for his or her safety or the safety of others; or,
- suffer substantial emotional distress.

Stalking

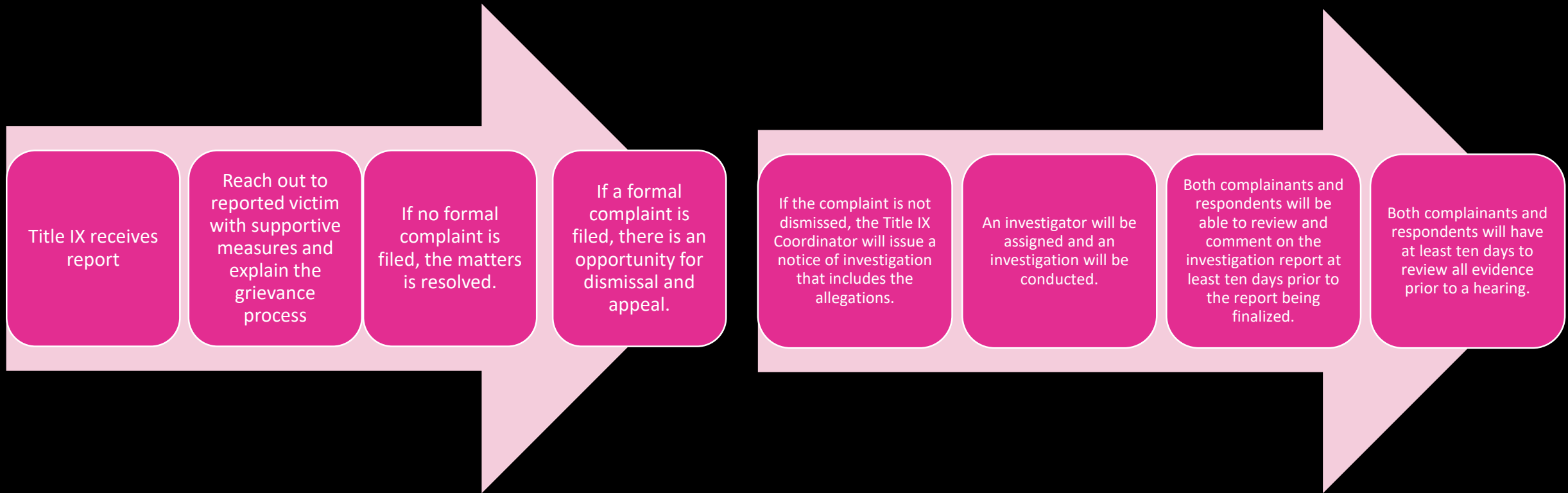
Title IX and our institutions prohibit retaliation or any action that was intended to or has the effect of taking adverse action against an individual's living, learning, or working environment that a reasonable person would find it intimidating or hostile because of something that an individual did to participate in our policy and procedures including but not limited to filing a complaint or being a witness in or supporter of or against a complaint. This could include interfering with the reporting or the investigation of prohibited behavior, such as tampering with or destroying relevant evidence, or intimidating, threatening or attempting to influence, in any way, the testimony or information of a reporter, complainant, or witness.

Retaliation

Title IX Process (Process A)

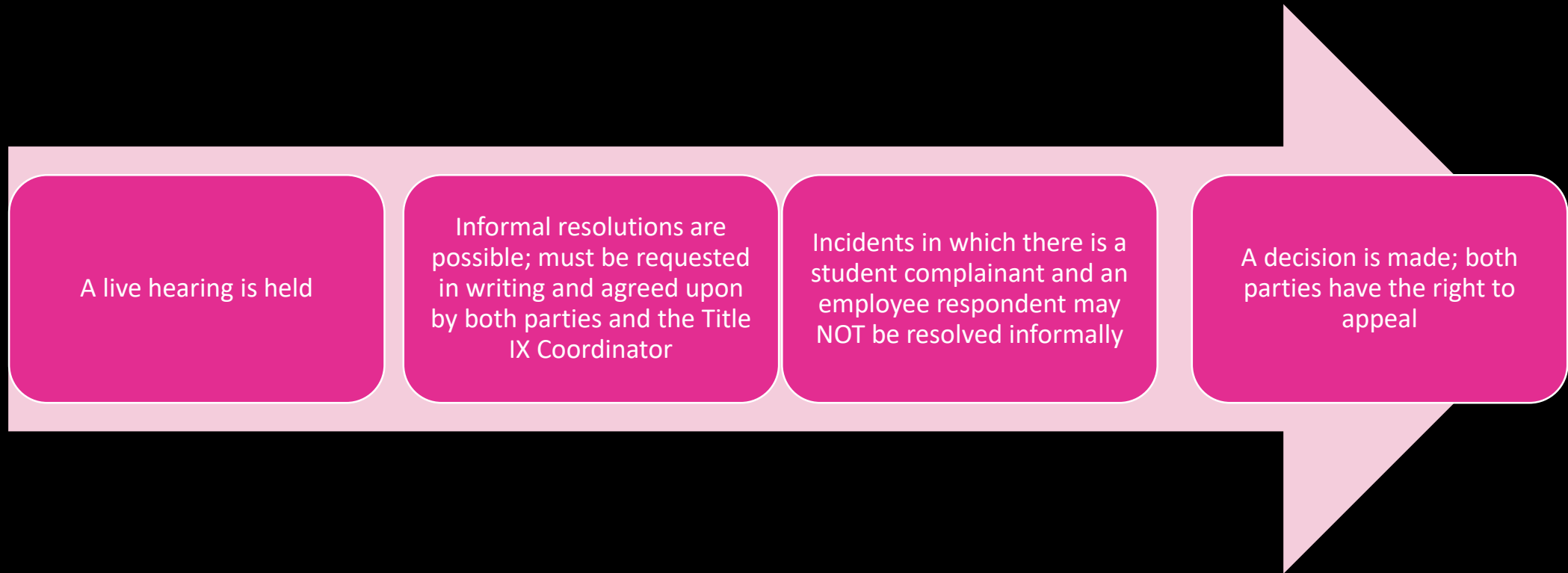
Process A

One policy, two procedures



Process A

One policy, two procedures



One policy, two procedures

- Requires a formal complaint
- A hearing during which each party will have an advisor responsible for questioning
- A decision will be rendered by the appropriate Decision Maker (Deputy Coordinator)
- The decision is appealable

An informal resolution is possible at any stage of the process, so long as it is requested in writing and the parties and College or University agree.

Process A

Formal Complaint

Is a document (including an electronic submission) filed by a complainant with a signature or signed by the Title IX Coordinator alleging Title IX sexual harassment in a College or University education program and requesting initiation of Title IX resolution/grievance procedures

Formal complaint signed by a reported victim

- The complainant must be a current member of the campus community or attempting to participate in an institution's education program or activity at the time of the Formal Complaint.
- Third-parties may not file formal complaints on the behalf of another.

In rare cases, the College or University may move forward without a formal complaint (aka, the Title IX Coordinator signs the complaint) if there is additional independent corroborating information of the misconduct reported such as other reports involving the same party or pattern of assault or abuse, a history of arrests or violence, use of a weapon, or other relevant evidence.

Process A

Formal complaint signed by the Title IX Coordinator

- Must consider the reported victim's wishes and must be a "reasonable" decision "in light of the known circumstances."
- Must take into account whether or not the alleged misconduct was that of an employee, part of a pattern of behavior by a respondent, egregious or violent in nature, or other similar factors

Formal Complaint

There *must* be a formal complaint to trigger an institution's grievance process that includes the following

- Options for an informal resolution
- An investigation
- A live hearing
- Rights to appeal

Dismissal of a Formal Complaint

May occur upon receipt, after an initial interview with the reported victim, or during an investigation, but before a hearing

Must be provided simultaneously in writing to both parties

May be appealed by either party

Dismissals under Title IX

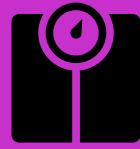
Mandatory

- The alleged behavior did not occur in the United States
- The alleged behavior did not occur within the College's/University's programs or activities
- The complainant is not participating or attempting to participate in the College's/University's programs or activities

Discretionary

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any of the allegations
- The Respondent is no longer enrolled or employed by the College or University
- Specific circumstances limit our ability to gather evidence sufficient to reach a determination regarding the alleged behavior

A note about the dismissal of a formal complaint....



Supportive measures are still offered.



The dismissal can be appealed by a complainant or a respondent.

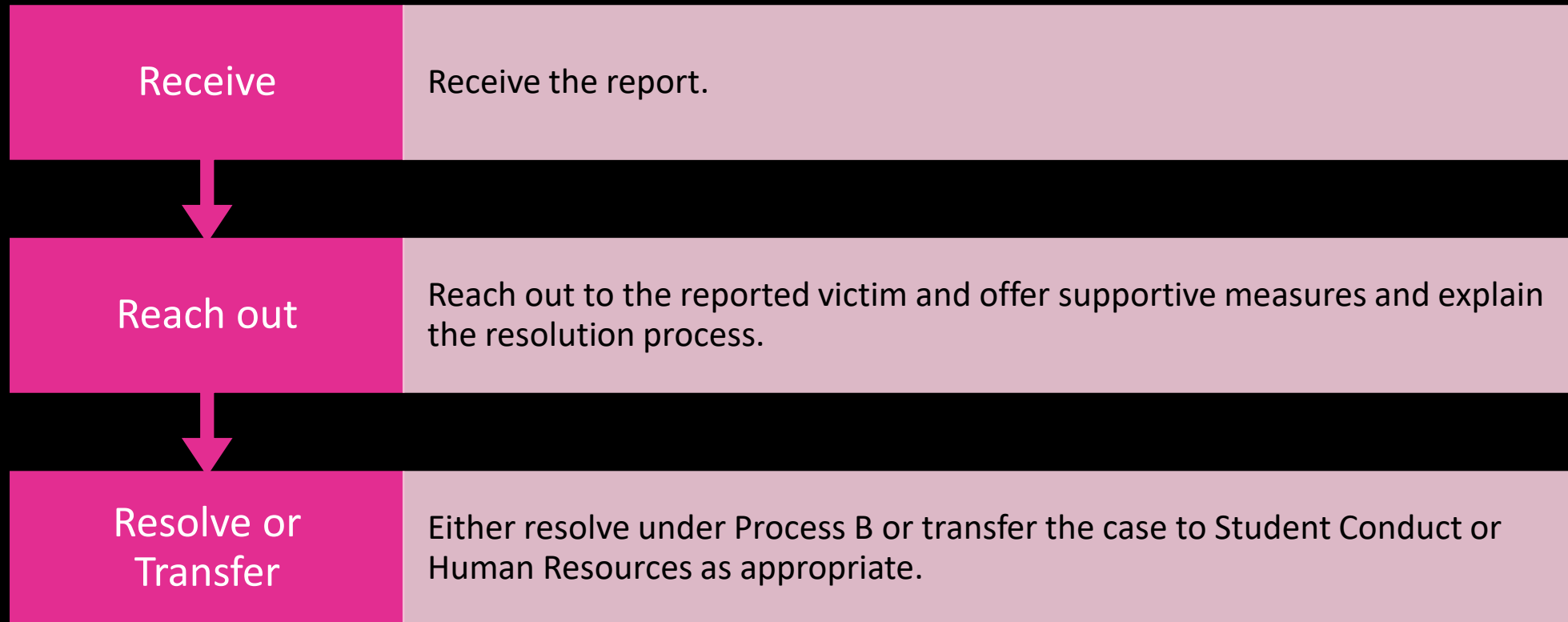


If appropriate, the misconduct will still be investigated and addressed under another process.

Other Prohibited Conduct Process (Process B)

Process B

One policy, two procedures



One policy, two procedures

- An investigator will be assigned, and an investigation will be conducted.
- An administrative hearing may still be held.
- An outcome will be determined and issued to the parties as before.

An informal resolution is possible at any stage of the process, so long as it is requested in writing and the parties and the Title IX Coordinator agree.

Supportive Measures

Designed to restore or preserve equal access to the institution's programs and activities without unreasonably burdening the other party. This includes measures intended to protect the safety of all parties and/or the campus community.

Supportive Measures

Non-disciplinary and non-punitive

Individualized

Offered as appropriate and reasonably available

Without fee or charge

Available to both parties regardless of whether or not a formal complaint is filed

Supportive Measures Examples

Counseling

Extensions of
deadlines or other
course related
adjustments

Modifications to
class or work
schedules

Campus escort
services

No Contact
Orders**

Changes in work
and housing
locations

Leaves of absence

Increased security
or monitoring of
certain campus
areas

Interim Measures

May still be implemented if (and only if)

- An emergency removal process that includes an individualized safety and risk analysis that determines if there is an immediate threat to the **physical** health or safety to campus community members *arising from the allegations of sexual harassment* is implemented
- The purpose is to protect the physical health and safety of impacted individuals and not to penalize a respondent while the grievance process is pending.
- Students must be given immediate notice and an opportunity to question decision of removal or other punitive actions.
- Employees may still be placed on administrative leave during the grievance proceedings.

Investigations

A fair and impartial process conducted by the institution to collect evidence (inculpatory and exculpatory) sufficient for a decision maker to determine whether the misconduct occurred.

Investigation Overview

- Trained investigator(s)
- Fair and impartial (evidence gathering, not fact finding)
- Written Notice of Allegations (Amended as needed)
- Ensure investigation participants have advanced written notice of interviews
- Understand the burden of evidence collection belongs to the institutions
- Cannot access medical, mental health, or other privileged materials without voluntary written consent
- Understand that parties are not restricted in discussing the allegations
- Ensure that both parties have the right to present witnesses (even experts) and evidence
- Ensure that both parties have at least ten days to review and respond to any evidence prior to a finalized report (Process A)
- Ensure that both parties have at least ten days to review and respond to final investigation report prior to a hearing (Process A)

Investigation Considerations

- Investigations must be conducted in a reasonably prompt time frame (90 Business Days Max; Goal is 30 to 60 Business Days)
- As investigators learn more, it is possible and even likely that the notice of allegations might be amended
- Identify relevant policy elements and required procedures.

Notice of Interview(s)

- Comes from the Investigator
 - Directly to the participant and if relevant, the advisor
 - Includes the date, location (format), and purpose of the interview or an invitation to provide availability
 - Allows enough time for the participant to prepare for the interview

Amnesty

The College or University will generally not pursue disciplinary action against a student who makes a good faith report or who participates truthfully as a party or witness in the resolution process related to Prohibited Conduct, for personal consumption of alcohol or other drugs (underage or illegal) or other minor misconduct which would otherwise be a violation of the Student Code of Conduct, Handbook, or other policies, provided the misconduct did not endanger the health or safety of others. The College or University may, however, engage in an assessment or educational discussion or pursue other non-disciplinary options regarding the ancillary misconduct, including alcohol or other drug use.

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After the investigation...

Title IX Sexual Harassment (Process A)

- Investigator will prepare a Draft Investigation Report
- Complainants and respondents will have a minimum of ten days to review and inspect all relevant or directly related evidence
- The Investigator will prepare a Final Investigation Report
- Complainants and respondents will have a minimum of ten days prior to the live hearing to review and inspect all relevant evidence
- A live hearing

All other Prohibited Conduct (Process B)

- Investigator will prepare a Draft investigation Report
- Complainants and Respondents will have a minimum of ten days prior to the administrative hearing to review and inspect all the relevant evidence
- An administrative hearing

Live Hearings (Process A)

A “live” meeting designed to allow the decision-makers to hear testimony and receive non-testimonial evidence to determine by the preponderance of the evidence standard whether or not the policy has been violated.

Hearing Overview

- May be conducted virtually so long as the decision-makers, the parties (and their advisors) can simultaneously see and hear the party or witness speaking.
- Complainants and respondents can request to be located in separate rooms so long as they can hear and observe each other in real-time.
- Must be recorded or transcribed.

Hearing Requirements

- Decision-maker must independently evaluate questions for relevance; questions about past sexual conduct are generally not permitted.
- Party's advisors must be allowed to conduct live questioning of other party and witness.
- Any rules implemented by the institution must apply to both parties.

Decision-maker's determination

- Must consider all the admissible testimony and non-testimonial evidence
- Evaluate evidence for relevance, weight, and credibility
- Analyze and resolve facts under our policy using the preponderance of the evidence standard

Administrative Hearings (Process B)

A meeting designed to allow the decision-makers to deliberate on the evidence and ask questions of the investigators to determine by the preponderance of the evidence standard whether or not the policy has been violated. Parties and advisors will be made aware of administrative hearing's dates and times, but they will not be present.



Relevance

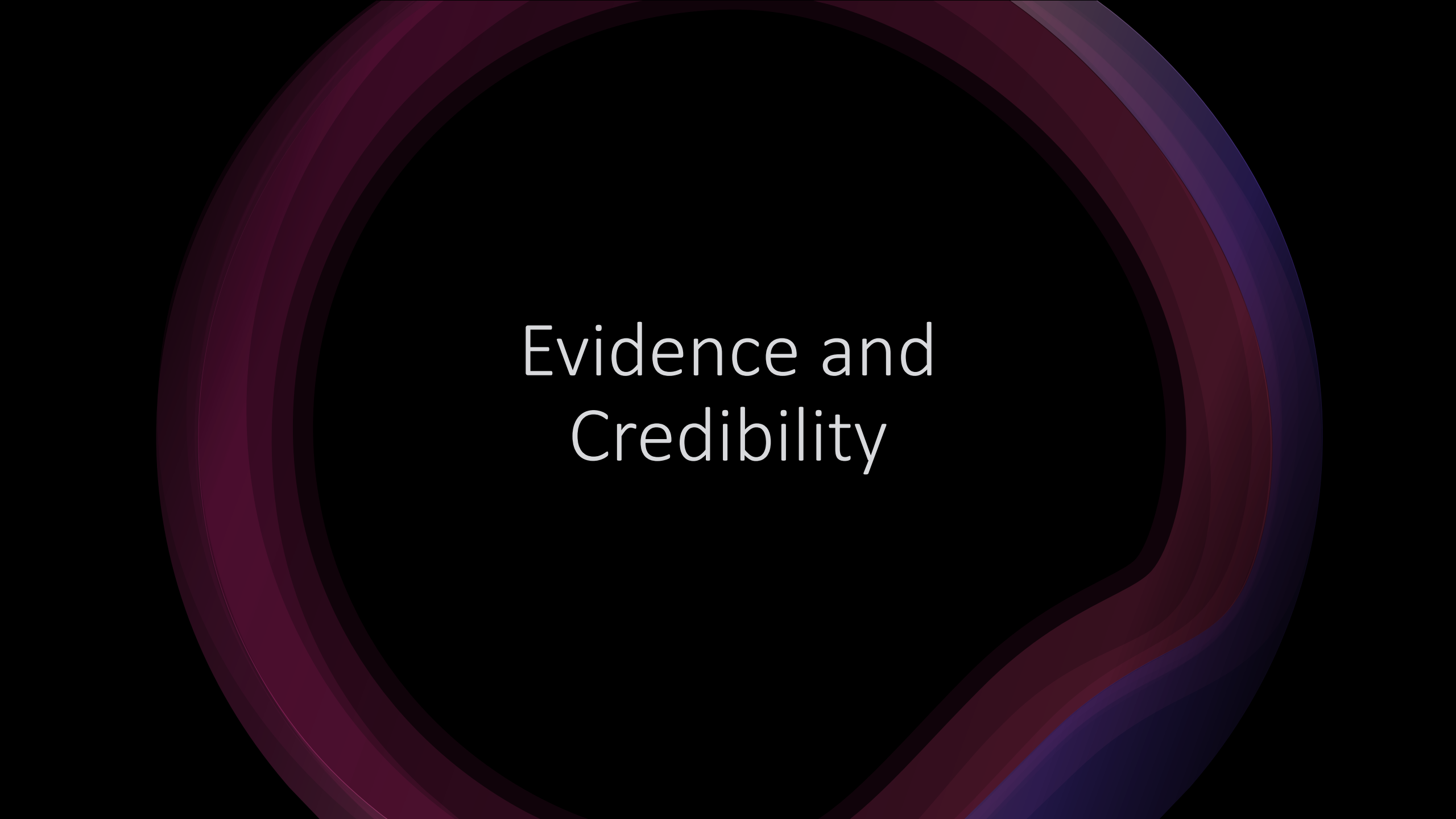
Colleges and Universities are expected to apply the
“plain and ordinary meaning” of relevance.

Questions

- Not directly related to the allegations will generally be irrelevant.
- That ask whether the facts material to the allegations are more or less likely to be true will generally be considered relevant.
- That are relevant but are asked in an abusive or argumentative manner maybe required to rephrased in an appropriate manner.

Questions that are always irrelevant:

- Questions and evidence about a complainant's sexual predisposition or prior sexual behavior UNLESS
 - The questions and/or evidence about the complainant's prior sexual behavior are asked or offered to prove that someone other than the respondent committed the alleged misconduct; OR,
 - The questions and/or evidence concern specific incidents of the complainants prior sexual behavior with the respondent and are asked or offered to prove consent.
- Questions and evidence that seeks the disclosure of legally privileged materials unless the party has given *prior voluntary written* consent.
- Duplicative questions



Evidence and Credibility



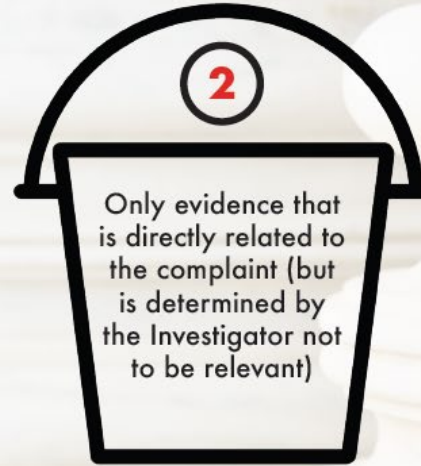
The Three Buckets of Evidence



Parties may make case to Investigators/Decision-makers that this evidence should be shifted to Bucket 2 or 3.

Once finalized, this evidence should be provided to the Parties/Advisors/Decision-makers within the investigation report via secure technology.

Evidence is relevant when it tends to prove or disprove an issue in the complaint.



Parties may make case to Investigators/Decision-makers that this evidence should be shifted to Bucket 1 or 3.

Once finalized, this evidence should be provided to the Parties/Advisors/Chair in a separate file via secure technology.

Evidence is directly related when it is connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.



Evidence should be maintained by the Investigator(s), but disregarded for purposes of the process. Parties/Advisors/Decision-makers don't get to see or know about it.

Weighing the Evidence (Inculpatory and Exculpatory)

More weight

- Directly related & relevant
- Corroborating
- Convergent
- Credible
- Consistent

Less weight

- Directly related & irrelevant
- Contradictory
- Conflicting
- Not credible
- Inconsistent

Assessing Credibility

Credibility Assessment - When some of the evidence requires the evaluation of one person's word against another, investigators and decision makers should follow guidance from the Office of Civil Rights to weigh evidence and credibility. The evaluation of evidence may take into account:

- **Detail and Consistency:** The accuracy of each person's account should be compared in an attempt to evaluate honesty and consistency.
- **Demeanor:** While emotional responses vary widely, each party's reactions and behavior after the alleged incident could be evaluated as part of a decision.
- **Action taken:** The timing of a report may be considered, although either an immediate or delayed report could be reasonably explained. Actions taken after the alleged encounter may also be considered.
- **Other contemporaneous evidence:** Verbal or electronic communication with friends or family (and their reactions), any other form of written details, and the timing of such communications may be factors in a decision.

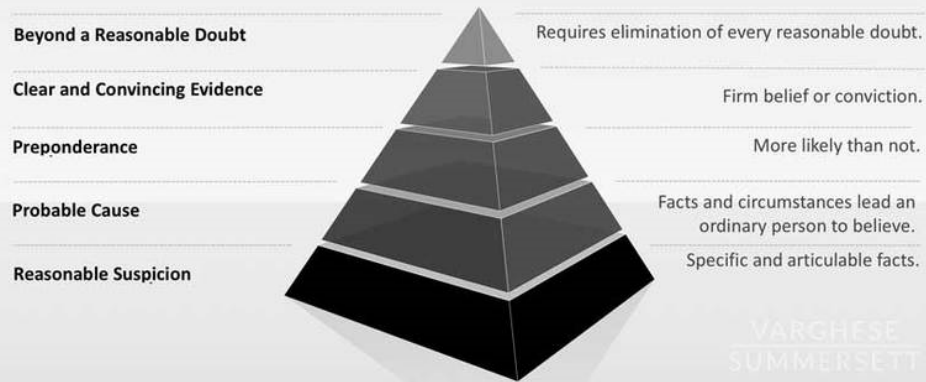
Assessing Credibility

- Inherent plausibility: Is the testimony believable on its face? Does it make sense?
- Demeanor: Did the person seem to be telling the truth or lying? Why?
- Motive to falsify: Did the person have a reason to lie?
- Corroboration: Is there witness testimony (eye-witnesses, people who saw the person after the alleged incidents, or people who discussed the incidents with them at or around the time they occurred) or physical evidence that corroborates the party's testimony?

Evidence Standard

In Title IX sexual harassment cases and other forms of Prohibited Conduct, the *preponderance of the evidence* standard will be used to determine whether or not a person is found responsible for violating our policies.

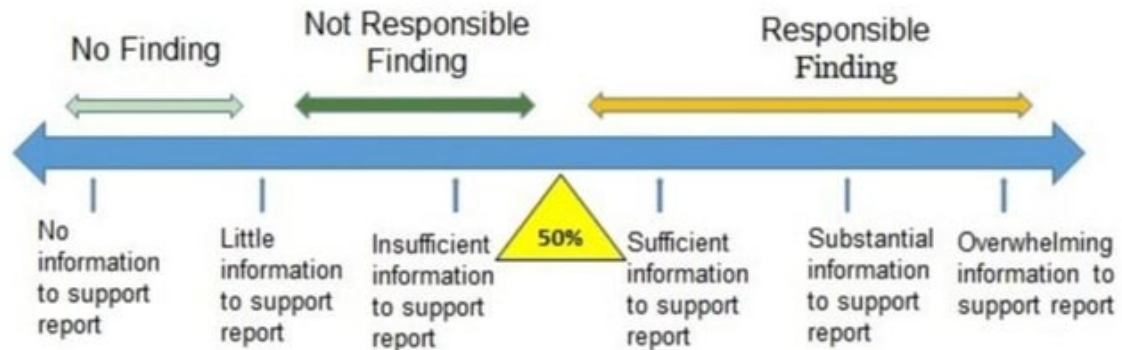
BURDENS OF PROOF



Why a pyramid? | As the level of proof required rises, the fewer number of cases meet the level of proof.

Preponderance of Evidence Standard

*A Requirement that **More than 50%** of the Evidence Points to Something*



Preponderance of the Evidence



Greater Weight of the Evidence

Appeals

An equal opportunity for complainants and respondents to appeal or challenge a decision to dismiss or the outcome of a hearing on limited specified grounds

Appeals

- Are granted **ONLY** in the following circumstances
 - Procedural irregularity that affected the outcome or decision
 - New evidence, that was not *reasonably* previously available that could affect the outcome or a decision
 - The Title IX Coordinator, Investigator(s), or Decision-maker had a conflict of interest or a bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome or decision

Third-parties may not file an appeal on behalf of a complainant or respondent.


Informal Resolutions

A voluntary process, requested in writing, that resolves formal complaints in a way other than a hearing that is agreed upon by both parties and the University.

Informal resolutions

- A formal complaint must have first been filed.
- The parties must voluntarily agree to participate in writing.
- The parties must be informed in writing how the process will work and the possible consequences for participating which includes information about how the records will be maintained or could be shared.
- The parties must be allowed to withdraw from an informal resolution up until it is finalized.

Informal resolutions may not be implemented to resolve allegations that an employee engaged in Title IX sexual harassment of a student.



Privacy,
Confidentiality, and
Anonymity

What do they mean?

Privacy: a right to have sensitive personal information out of the public. As an employee and a Title IX administrator you are expected to keep all information you learn private. We ask parties to a complaint to respect the sensitive nature of these issues and keep information learned private.



Confidentiality: a legal term referring to the ability to not report or share information. Medical and therapy records are confidential. Confidential employees have legal privilege and do not report Title IX or Clery related offense.



Anonymity (anonymous): A person not identified by name. An anonymous employee is a person that does not have to report to Title IX and names and can keep identities private for Clery reports. A person, not a responsible employee or official with authority, can file an anonymous report.

Privacy considerations

- All records generated through the Policy and Procedure on Discrimination, Harassment, and Title IX Sexual Harassment are subject to consideration under FERPA, employment law, and institutional record retention and keeping policies.
- Institutions are prohibited to restrict complainant's and respondent's ability to discuss the allegations under investigation or to present evidence.
- College and Universities must be mindful of the parties' rights to speak about a case.
- Retaliation, intimidation, and witness manipulation are prohibited and should be addressed by the institution.



After the Resolution

Remedies

Designed to restore or preserve equal access to the institution's education program or activity and is provided to the complainant

May be a continuation of or the same as supportive measures, but they may also burden the respondent or be disciplinary in nature

The nature and specifics of the remedy need not be disclosed; just that the institution is providing remedies to the complainant

Records maintained for at least seven years

Sanctions

Will be determined based on the nature of the violation and in consideration of aggravating and mitigating factors

May have educational, punitive, and protective elements

Records maintained for at least seven years

Sanctions

- Sanctions for a finding of responsibility for Student Respondents include, but are not limited to, any of the sanctions outlined in the Student Codes of Conduct, education, growth plans, community service, referral to counseling, warnings, probation, suspension, suspension from participation in activities or privileges, suspension from the College/University or the residence halls, or expulsion. In determining (a) sanction(s), the designated Deputy Coordinator will consider whether the nature of the conduct at issue warrants removal from the College, either permanent (expulsion) or temporary (suspension).
- Sanctions for findings of responsibility for Employee and Faculty Respondents include, but are not limited to, education, referral to counseling, and disciplinary actions such as warnings, reprimands, withholding of a promotion or pay increase, reassignment, restriction in activities or privileges, temporary suspension without pay, compensation adjustments, or termination.
- Other factors pertinent to the determination of what sanction applies include, but are not limited to, the nature of the conduct at issue, prior disciplinary history of the Respondent, previous College/University response to similar conduct, and the College/University interests (e.g., in providing a safe environment for all).
- Third parties, such as visitors, contractors, consultants, vendors providing services to the College/University may be subject to appropriate corrective action, including, but not limited to, issuance of a no trespass order or cancellation of relationship with the College/University.

Case Studies

Resources

- <https://sites.ed.gov/titleix/policy/>
- <https://www.eeoc.gov/policy/docs/harassment.html>
- <chrome-www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>
- <https://www.bricker.com/insights-resources/publications/higher-education-title-ix-training-requirements-an-overview>
- <https://atixa.org>
- <https://legal-dictionary.thefreedictionary.com/weight+of+evidence>
- https://www.linkedin.com/pulse/three-techniques-weighing-evidence-short-guide-tom-coyne/?trk=read_related_article-card_title
- <https://www.vaildaily.com/opinion/robbins-inculpatory-and-exculpatory-evidence/>